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ABSTRACT

Since the early 1970s, Haitians have been arriving in the United States in increasing numbers. Since 1977, the Immigration and Naturalization Service has taken several steps in response to this influx and to problems Haitian refugees face regarding asylum, exclusion, and deportation. One major decision resulted in new regulations that would provide for evidentiary hearings on asylum claims. Other decisions were to release those Haitians in detention who had been unable to post $500 bond, and to authorize work permits for Haitians residing in Florida with asylum claims pending. In mid 1978, there was a marked increase in the number of Haitians arriving in Florida. The Immigration and Naturalization Service, in order to shorten lines at the district office in Miami, reduced the bureaucracy involved with processing new aliens and took steps to speed up the hearings process for Haitians already detained. Recently, several lawsuits have been filed on behalf of Haitian refugees and are currently pending. In the meantime, several thousand new work authorizations have been issued. In light of the fact that the Immigration and Naturalization Service considers that most Haitians come to America to improve their economic status rather than out of political hardship, officials feel that considerable steps have been taken to aid this group. (Author/GC)

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STATEMENT

OF

DAVID CROSLAND
ACTING COMMISSIONER
IMMIGRATION & NATURALIZATION SERVICE

BEFORE

THE

SUBCOMMITTEE ON IMMIGRATION,
REFUGEES, AND INTERNATIONAL LAW,
JUDICIARY COMMITTEE

ON

HAITIAN REFUGEES

ON

JUNE 17, 1980

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
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Madame Chairwoman, members of the Subcommittee, I am here this morning at your invitation to discuss Haitian emigration to the United States. This topic is to say the least multi-faceted, and one which has gained a considerable amount of attention in the past. I welcome this opportunity to appear before you today.

For the past several years, Haitians have been arriving in the United States in increasing numbers. The process itself began in the early 1970's and by the end of that decade the total number that had arrived increased dramatically. One of the earliest arrivals occurred in 1972. On December 12th of that year a small ship landed near Pompano Beach, Florida with 65 Haitian men, women and children aboard. Figures obtained from the Miami District Office reveal that as of May of this year, there were 6,903 Haitians in exclusion proceedings and 7,754 in deportation proceedings. Rapid growth such as this cannot be measured by statistics alone. Consequently, the thrust of my testimony today will be to highlight many of the significant events which occurred during my tenure as an official with the Immigration and Naturalization Service. As you know, I served as General Counsel from February, 1977 to October 1, 1979 at which time, I was appointed Acting Commissioner. Where appropriate, reference will be made to those events which occurred prior to 1977 which are relevant to an understanding of the activities undertaken since then.

During the summer and fall of 1977, a concentrated effort was made by then Commissioner Castillo and myself to address many of the concerns that had previously been raised on behalf of members of the Haitian community. Chief among those concerns was the absence of any evidentiary hearing on asylum claims in exclusion proceedings and the detention of Haitians who were unable to make $500 bond. In this regard, the Subcommittee's 1976 report suggested that the procedural distinctions between exclusion and deportation proceedings were outmoded where asylum procedures and the availability of section 243(h) relief are concerned, and that it would be desirable to consider the establishment of more uniform procedures for adjudicating asylum claims. It recommended that INS should work with voluntary agencies to establish procedures for the supervised release of Haitian asylum applicants. Commissioner Castillo and I actively sought the views of individuals within the Service, as well as the views of representatives from various voluntary organizations. This dialogue lasted for a period of several months. Additionally, we visited Haiti during October, 1977 and met with Haitian immigration officials. I talked with one returnee and also met with the family of another person who had returned from the United States. I also spoke with representatives of voluntary agencies in Haiti about conditions there.

As a result of our efforts during that year, several significant decisions were made. First, of course, was the decision to promulgate new regulations which would provide for evidentiary hearings on asylum claims in exclusion proceedings. This voluntary action was taken after the Service successfully resisted a legal challenge in the Fifth Circuit Court of Appeals. The case, Marie Pierre v. United States, 547 F.2d 1281 (5th Cir. 1977) was at the time before the Supreme Court. As a consequence of our decision, the Supreme Court vacated the lower court's judgment and remanded the case for a consideration of mootness. (Pierre v. United States, 434 U.S. 962 (1977.)

The second major decision centered on the release of those members of the Haitian community then in detention. The policy of the previous Administration was to require each Haitian to post a bond of $500 in order to be released. As a consequence, some individuals were detained for substantial periods of time in various state penal institutions. At the time, serious consideration was given internally to the desirability of continuing the policy of the previous Administration. Consequently, in November of 1977, the Service announced its decision to modify that policy by releasing those members of the Haitian community then in detention. The Service also decided to issue authorizations to work to Haitians then present in Florida who had previously sought political asylum and

had asylum claims pending.

In the spring and summer of 1978 a marked increase in the number of Haitians arriving in Florida occurred. The following statistics obtained from the Miami District Office illustrate the point: In March 1978, 4 boats with a total of 35 Haitians arrived; in April 1978, 6 boats with 94; in May 1978, 7 boats with 178 Haitians; in June 1978, 27 boats with 630; in July, 20 boats with 454 Haitians arrived in Miami. During this period, hundreds and perhaps thousands of Haitians appeared at the Miami District Office of the Immigration and Naturalization Service. Sizeable lines immediately formed. In an effort to reduce these lines, the Service requested a minimum amount of background information from these aliens. At the same time, work authorizations of a temporary nature were issued.

This dramatic rise in the number of arriving Haitians resulted from several factors. Many of the Haitian arrivals during this period were coming directly from the Bahamas. During 1978, the Government of the Bahamas began expelling Haitians living illegally in the Bahamas from that country. Many were not returning to Haiti, but were coming to the United States instead. The situation was exacerbated by the fact that at this time the Service was not holding any exclusion proceedings for Haitians, because the new regulations had not been issued.

The increasing number of Haitians arriving in the United States created problems for the state and local governments in Florida, by placing strain on local resources.

A decision was made to remedy what was quickly becoming a less than desirable situation (increasingly large numbers of unprocessed aliens). To that end, steps were taken to complete processing and to schedule deportation hearings. To assist with this effort, additional Service personnel were assigned to the Miami Office.

In the spring and early summer of 1978, deportation hearings for Haitians in the Miami District Office were being heard at a rate of 4 per day. However, due to the fact that the great majority of Haitians were claiming asylum, the hearings were in the nature of arraignments where the alien would simply plead to the allegations in the Order to Show Cause, regarding identity and alienage. The alien would then be routinely granted a continuance by the Immigration Judge to allow for preparation of the application for asylum. In addition, many of the Haitians had been appearing at these hearings without counsel; in such cases a continuance would automatically be granted. Continuances were also liberally being granted for attorney preparation in these cases.

Thus, in the late summer and early fall of 1978, deportation hearings for Haitians were scheduled to be heard on an accelerated basis. The decision to increase scheduling of hearings was made in light of our experience which demonstrated that the merits of these cases were not being reached by the Immigration Judges. It should be noted that 90 % of the deportation cases heard during this period are still pending before the Immigration Judges and decisions on the merits of these aliens' asylum claims have not yet been made, nor have any of these aliens been returned to Haiti.

Another factor which operated to delay the completion of these deportation hearings was the filing in January 1979 of a lawsuit, National Council of Churches v. Immigration and Naturalization Service, (S.D. Fla.). This was a case brought under the Freedom of Information Act seeking the names of Haitian aliens returned to Haiti since January 1977. Plaintiffs claimed that this information was necessary in order for them to prepare claims for asylum on behalf of their Haitian clients, through interviews of Haitian returnees. As a result of this litigation, deportation hearings were not being held during this time period. In addition, the State Department sent a study team to Haiti which issued a report in May 1979 on conditions there. It was not until after that report was issued, that deportation hearings for Haitians resumed in Miami. Thus, between January and June 1979, no such hearings were held.

In addition, in the fall of 1978, the Associate Attorney General's office completed its review and approved the Service's proposed regulations on granting evidentiary hearings to asylum claimants in exclusion proceedings. That office, after examining the work authorization practices in the Miami District Office, also stated that no work permits were to be issued to newly arriving Haitians absent exceptional circumstances. Many of these actions were, as seen below, subsequently challenged.

In May, 1979, the Haitian Refugee Center, on behalf of 8 named Haitians, and all others similarly situated, filed suit in a lawsuit styled Haitian Refugee Center v. Civiletti, No. 79-2086 (S.D. Fla.). Plaintiffs claimed that the Service's processing of Haitian aliens during the summer of 1978, and the scheduling of deportation hearings for these aliens, at an accelerated rate, operated to deny them due process of law. They also complained that they were denied equal protection of the laws, in that Haitians as a group were being treated differently from other aliens. In July 1979, the District Court enjoined the Service from removing to Haiti any Haitian alien in deportation proceedings who claimed asylum. That order is still in effect. An 18-day trial on the merits of this case was held, and was completed in early May 1980. We are now awaiting a decision from the District Court in this matter.

In addition, the Marie Sannon litigation was continuing. Sannon was a plaintiff in the Marie Pierre case, which had challenged the Service's failure to hold evidentiary hearings on asylum claims in exclusion proceedings. In September 1978, without opportunity for comment, the Service published regulations providing for such hearings. However, the District Court issued an order holding the regulations invalid for being promulgated in violation of the Administrative Procedure Act. It thus continued an injunction previously issued, prohibiting the Service from holding exclusion hearings for Haitians who filed asylum claims prior to November 1, 1977, until these regulations were modified by the Service. The regulations were republished for comment by the Government and became final in May 1979. In January 1980 the District Court ruled that the case was moot in light of the republication of the regulations. However, the judge conditioned his order on the giving of extensive notice in the media and elsewhere, to Haitian aliens, of their right to claim asylum. The judge's order requires the Service to give notice of this right to any arriving Haitian, including Haitian tourists, businessmen or even diplomats who arrive at the Miami International Airport. The aforementioned injunction thus remains in effect until these notice requirements are complied with. The Government has appealed portions of this order, which appeal is now pending before the Fifth Circuit.

Shortly after the filing of Haitian Refugee Center, supra., a second suit - National Council of Churches of Christ v. Shenefield, (S.D. Fla.) was brought. This suit challenged on several grounds the revocation of work authorizations that occurred during the previous summer. We have, as a result of the preliminary orders issued in this litigation reissued more than 1,800 work authorizations. The case has yet to be finally decided, however, and a pre-trial date has now been set for late summer.

Apart from the litigation referred to above, there has been a considerable amount of activity in the area of work authorizations. In July of 1979 and again in March of 1980, proposed work authorization regulations were published for comment in the Federal Register. Furthermore, on April 4, 1980, we issued a policy statement to the field so as to assist in the implementation of the newly enacted authorization provisions contained in the Refugee Legislation. The work authorization activity generated recently is to say the least, quite significant. From April 14, 1980 to May 1, 1980 in Miami alone, approximately 1,000 authorizations were issued to Haitians. Moreover, I have been informed that that number has in the past several weeks grown dramatically as a result of issuance activity to members of both the Haitian and Cuban communities.

Questions have been raised as to whether the treatment afforded members of the Haitian community has been less favorable than that afforded other ethnic or racial groups. To properly respond to any such assertion, Haitian emigration must be put into proper perspective. Generally, these aliens have entered the United States in an undocumented status. Furthermore, unlike other groups such as Ethiopians, Ugandans and Nicaraguans there has never been a determination by the Department of State that the conditions existing in their homeland were of such a nature as to merit extended voluntary departure. Thus their status is quite different. Despite that, however, actions have often been taken by the Service to benefit the Haitian community.

As noted before, we decided in 1977 to release all Haitians then in detention in South Florida. During the same year, we voluntarily decided to allow individuals in exclusion proceedings to present their asylum claims to Immigration Judges in evidentiary hearings. While this would apply to all individuals, it is clear that it was undertaken in part at least in response to requests generated by or on behalf of members of the Haitian community. Similarly, the Service's Form I-589, Application for Asylum, has been modified by the addition of a questionnaire, which allows the alien to more fully explain the circumstances underlying his claim

for asylum. This was done specifically in response to complaints from members of the Haitian community. Moreover, today, authorizations to work are being provided to Haitians upon request in increments up to six months.

In closing, I wish to emphasize that it has been the consistent position of the Immigration and Naturalization Service that the vast majority of Haitians are coming to the United States primarily to improve their economic status. We have repeatedly taken this position in the litigation that has arisen over the years. Nonetheless, we have on numerous occassions taken steps designed to ameliorate hardship to Haitians pending determination of their asylum claims.

This concludes my prepared remarks. I will answer any questions which you might have.